

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CASE NO. 12-CR- 730
	§	
YOLANDA NOWLIN	§	

YOLANDA NOWLIN’S SUGGESTED VOIRE DIRE QUESTIONS

COMES NOW YOLANDA NOWLIN, Defendant in the above-styled and numbered cause, and files these suggested voir dire questions as follows:

OVERVIEW OF CASE

1. This is a Federal Criminal Case. The Defendant YOLANDA NOWLIN is charged with conspiracy to commit Health Care Fraud in violation of 18 U.S.C. §1349, Health Care Fraud in violation of 18 U.S.C. §§1347 and 2, Conspiracy to violate the Kickback Statute in violation of 18 U.S.C. §371, and Social Security Fraud in violation of 18 U.S.C. 641 and 2.

Notwithstanding your personal views, could you find a Defendant not guilty of any one or all of those allegations of Medicare fraud and/or kickback conspiracy, if the government fails to prove its case beyond a reasonable doubt? Notwithstanding your personal views, could you find a Defendant not guilty of those allegations of Social Security Fraud, if the government fails to prove its case beyond a reasonable doubt?

Stated another way, is there anyone who would convict simply based on the fact that the Medicare/Medicaid conspiracy or fraud charges have been made? Additionally, is there anyone who would convict simply based on the fact that Social Security Fraud charges have been made?

VOIR DIRE

2. This part of the case is called Voir Dire.

- a) In French it means to tell the truth or speak the truth.
- b) We need to know what your thoughts, feelings and opinions are about this case.
- c) What is really important about this process is that there are no right or wrong answers to any of my questions.
- d) We just need you to tell us the truth.

RELATIONSHIP WITH PARTIES/PARTICIPANTS

3. Are any of the panel members personally acquainted with the United States Attorney, Kenneth Magdison, or any of the members of his staff?

4. Are any of the panel members personally acquainted with the prosecutors in charge of this case, Special Assistant United States Attorney Adrienne Frazier and Texas Assistant Attorney General Suzanne Bradley?

5. Are any of the panel members personally acquainted with defendant, YOLANDA NOWLIN, the accused in this case?

6. Are any of the panel members personally acquainted with Michael M. Essmyer, Sr. Ms. Nowlin's counsel?

7. Are any of the members of this jury panel related to or acquainted with any one of the following witnesses which the government states it intends to call? (For purposes of this question, it is requested that the court inquire of the prosecutor, out of the presence and hearing of the jury, the names of the witnesses she and/or he intends to call.) Same for Defense witnesses.

8. There are many people on this jury panel. Do any of you recognize another member of the panel as being a close friend or associate?

RACE QUESTIONS

9. Do any of you have any strong feelings, bias or prejudice against people who are black? What are those feelings? Can you overcome those prejudices?

10. Do you promise to apply the same laws and burden of proof to a black as you would to any other citizen? Why not? Can you overcome those prejudices?

MEDICARE/MEDICAID/DME QUESTIONS

11. How many of you are on Medicare now? How many of you are on Medicaid or have ever been on Medicaid?

12. How many of you know what a DME Company is (Durable Medical Equipment)? Have you ever dealt with a DME Company for supplies or equipment? Do you have any preconceived notions of what a DME company does?

13. Have you ever participated in any protest, demonstrations or activism for or against Medicare or Medicaid for any reason? Would you agree this shows bias against one way or the other?

14. Have you ever participated in any protest, demonstrations or activism against any health care bill? Would you agree this shows bias to government health care programs?

15. Do you have feelings, bias or prejudices for or against people in the health care profession or the health care equipment providers? Please explain.

16. Do you ever speak out publicly or privately about the government Medicare or Medicaid program? Please explain.

17. Have you ever had a dispute with a DME company? Please explain.

18. Have you ever contacted a government representative about a Medicare or Medicaid topic or issue for any reason? Please explain. Did this relate to a DME company? Do you have any preconceived notion or prejudice against DME companies or people who work for or own DME Companies? What about sales people for DME companies?

19. How many of you have elderly parents, grandparents, or other relatives who may need wheelchairs, walkers, or other aids? Has this created any harsh feelings, bias or prejudice toward or against Medicare/Medicaid health care or equipment providers?

20. How many of you have seen the ads on TV for wheelchairs or scooters provided by a company through Medicare/Medicaid? Do those ads promote a preconceived notion or bias? Please explain.

INDIVIDUAL DEFENDANT

21. Again, the Defendant's name is Yolanda Nowlin. Please stand Ms. Nowlin.

Is there anyone who would have strong feelings one way or the other about the Defendant just because of the way she looks? Why?

I ask again, does anyone actually know Ms. Nowlin?

Ms. Nowlin is married to Lorenza Charles Nowlin and she has four children. She lives in Bryan, Texas. Does anyone live in the Bryan/College Station area? Does anyone have any bias or prejudice against people from the Bryan/College Station area?

Ms. Nowlin's Medical Device DME companies were Yellabone Medic Care Express Equipment Supply Company and Yellabone Medical Equipment, Inc. She also owned Yellabone Trucking.

Has anyone ever heard of any of these companies? Would any one have a bias or prejudice just because Ms. Nowlin owned a medical supply store for several years or was in the business of providing or delivering Medicare/Medicaid equipment or supplies to indigent or low income individuals?

RELIGION

22. Is there anyone here who has strong feelings, bias or prejudices against any religion or religious group

- a. If so, what and why?
- b. Can you overcome that prejudice?

23. As an example, would you have strong feelings, bias or prejudices against someone who attends or is a minister in a denomination or church other than your own? Why? Can you overcome that prejudice? Please explain.

24. Is there anyone here who has strong feelings, bias or prejudices based on their religion or religious group against individuals who facilitate people obtaining Medicare/Medical equipment or supplies?

- a. If so, what and why?
- b. Can you overcome that prejudice?

INDICTMENT

25. Does anyone believe that just because someone is indicted that that fact is some evidence of guilt? It is NOT.

- a. Can you follow the Law?
- b. Can you overcome that bias and prejudice?

BURDEN OF PROOF

26. Does anyone believe that it is wrong for the government to have the burden of proof in a criminal case?

27. The government must prove the Defendant's guilt beyond a reasonable doubt; does anyone believe that that burden is too high for the government?

28. Is there anyone who would not follow the law, but would allow the government to convict someone under a lesser burden?

CRIME COMMITTED ON A PANEL MEMBER

29. Has anyone had any type of crime perpetrated on them in the last 10 years?

a. As to how many of you was this a monetary crime?

b. What type of offense?

c. What was the outcome?

d. Can you overcome your own personal feelings and bias?

30. How many of you have had crime committed on a relative or friend in the last 10 years?

a. What was the outcome?

b. Can you overcome your own prejudice over that?

COMPUTER/INTERNET

31. Does anyone have any computer training? Any internet training or expertise? Has any worked as a Medicare/Medicaid biller or clerk?

a. You understand that if there is testimony over these areas or electronic billing to Medicare/Medicaid that you cannot substitute your own training or expertise for what you have heard?

b. While you can use your own life's experience, you cannot become an expert for your fellow jurors?

c. Can everyone promise us that?

GOVERNMENT

21. Have you ever worked for any governmental entity? What governmental entity? Have you ever been involved in an investigation by the FBI, the State of Texas, or any other government agency?

Please explain?

22. Do you believe the U.S. Government and its investigators are always right?

Please explain?

23. Would you believe a government employee or witness over a Defendant or Defendant's witness simply because they worked for the government?

SPECIAL TRAINING

24. Does anyone have a background in:
- a) Medicare; Medicaid; DME companies;
 - b) Medical device supply or marketing; sales;
 - c) Law; Medicine; Engineering;
 - d) Government or supplying the Government; rules and regulations concerning DME companies;
 - e) Politics;

- f) Medicare/Medicaid billing;
- g) Medicare in any format;
- h) Accounting or CPA work;
- f) Does anyone have any special knowledge that they believed for any reason may have a bearing on the way they view this case?

32. What type of work do you do on a daily basis?

PRIOR JURY AND LEGAL EXPERIENCE

33. Have any panel members previously served on a federal or state grand jury?

34. Have any of the panel members ever served as a juror in a federal or state trial? Civil or criminal?

35. If you have served as a juror in a federal or state trial, did the jury reach a verdict in that case?

36. Have you or a member of your family, or a close friend been a complaining witness or a victim in a criminal case?

37. Has any member of the panel been a witness in a criminal case?

38. Has any member of the jury panel ever been a party to a civil lawsuit?

39. Has any member of the jury panel received any legal training either in law school, paralegal school or on the job?

RELATIONSHIP TO LAW ENFORCEMENT

40. Have any of the panel members served for or as an officer of the IRS?

41. Have any of the panel members ever served or been employed in the office of any state or federal prosecutor?

42. Has any member of the panel received any kind of special training in law enforcement?

43. Has any member of the panel applied for a job with law enforcement?

44. Do any of you have a member of your family who is employed by the federal government or by a state government or by any governmental entity?

45. Do any of you have any close friends who are involved in law enforcement?

46. Are there any members of the panel who would believe the testimony of a government agent, informant, or employee over the testimony of a private citizen solely because he or she is a government employee, informant, or agent?

LEGAL PRINCIPLES

47. The law of the United States provides: (1) that the government has the burden of proving each and every allegation in the indictment beyond a reasonable doubt; (2) that an accused is presumed to be innocent and this presumption of innocence goes to every element of the offense charged; (3) that an accused is not required to prove his innocence or to present any evidence; and (4) that the burden of proof remains on the government throughout the entire proceedings. Is there any member of the panel, who for personal, religious, or

any other reasons, feels that he or she cannot comply with any portion of the law as I have just recited it to you?

48. Do each of you realize that you must give the defendant the benefit of a presumption of innocence without any mental reservations whatsoever,” and that you are to consider this presumption of innocence as actual proof of innocence until it is overcome by proof of guilt beyond a reasonable doubt.

49. Knowing what I have just said, would you require the defendant at anytime to satisfy you as to his innocence?

50. Does anyone believe that it is wrong for the government to have the burden of proof in a criminal case?

a. The government must prove the defendant’s guilt beyond a reasonable doubt; does anyone believe that burden is too high for the government?

b. Is there anyone who would not follow the law by allowing the government to convict someone under a lesser burden?

51. Do each of you understand that the indictment is not evidence of guilt in this case and cannot be considered as evidence of guilt?

52. Is there any member of the jury panel who think the defendant must have done something wrong or he would not be present in court today?

53. Does each member of the jury panel understand that as the defendant sits here before you, she is not any more guilty of anything than any member of the jury panel or any other participant in this trial?

54. Have you reached or formed any conclusions in your mind concerning the allegations in this indictment that would require the defendant to present any evidence to dispel?

55. The law of the United States provides that the defendant does not have to testify in any criminal case. Our law further provides that if the defendant does not testify you may not consider that for any purpose in deciding his guilt or innocence. Is there any member of this jury panel who because of personal feelings or otherwise would not be able to follow that law?

56. Is there any member of the jury panel who feels that if the defendant does not testify it is an indication of the guilt of the accused?

57. Do each of you understand that an attorney, whether a prosecuting attorney or defense attorney, has a legal duty to object to evidence he/she feels should not be legally before the jury?

58. Do each of you understand that you cannot consider the fact that objections were made to certain evidence as any indication of a person's guilt?

59. Do you understand that the comments of the attorneys in the case are not evidence that can be considered by you in deciding the guilt of the defendant in this case?

60. Are each of you prepared to judge this case solely on the evidence introduced during the trial and the instructions of law given to you by the Court?

61. Do each of you realize that as a juror each will be the sole judge of the facts in this case?

62. When you retire to the jury room to reach your verdict will each of you cast your individual vote in this case?

63. Do each of you understand that the verdict in this case has to be unanimous and it is not a situation where the majority wins?

64. When you retire to the jury room to reach your verdict will each of you cast your personal vote even if you are in the minority in that vote?

THE LAW OF CONSPIRACY

65. The defendant is charged with conspiracy to commit an offense against the United States. A “conspiracy” is an agreement between two or more persons to accomplish some unlawful purpose. I will instruct you on the law of conspiracy in more detail at the end of this trial. However there are limits on what constitutes a conspiracy. Can you follow the law which states the following: (a) Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with and/or assembled together and discussed common aims and interest, does not necessarily establish proof of a conspiracy; (b) a person who has no knowledge

of a conspiracy but who happens to act in a way that advances some purpose of the conspiracy does not thereby become a conspirator.

PRETRIAL PUBLICITY

66. Is there any member of the panel who has read about this case or a similar case in the newspaper or heard about it in the media or knows anything about the case from any source whatsoever other than what you have heard today in court?

If so, please state:

- a. What you have read or heard about this or a similar case?
- b. Have you formed an opinion as to the guilt or innocence of the defendant or about the merits of the case from what you have read or heard?
- c. Knowing what you know about this case would you be satisfied being tried by a juror having your frame of mind?
- d. If selected as a juror in this case, would you be able to set aside any opinion or conclusion you might have reached about this case and judge this case solely on the evidence introduced during the trial and instructions of law given to you by the court?

MISCELLANEOUS

67. Do any of you feel any bias or prejudice toward the Defendant YOLANDA NOWLIN because she hired an old friend as her office manager,

and that office manager has pled and will testify against her under that lady's plea agreement?

68. Do you have any bias or prejudice against a Defendant because a convicted felon is a friend?

Respectfully submitted,
/s/ Michael M. Essmyer
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**Attorney for Defendant,
YOLANDA NOWLIN**

CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this the Defendant Nowlin's Suggested Voire Dire Questions via the USDC Southern District's CM/ECF system per the Local Rules on this the 23rd day of August, 2013.

/s/ Michael M. Essmyer, Sr.

Michael M. Essmyer, Sr.